

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1722.01
COMPLAINT INVESTIGATOR: Susan Miner
DATE OF COMPLAINT: March 22, 2001
DATE OF REPORT: April 17, 2001
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: May 8, 2001

COMPLAINT ISSUES:

Whether the Lake Central School Corporation and the West Lake County Special Education Cooperative violated:

- 511 IAC 7-22-1(d) with regard to the school's alleged failure to provide the parent with a notice of procedural safeguards:
 - a. when notifying the parent of a proposed placement or denial of placement; and
 - b. when the parent requested a due process hearing.
- 511 IAC 7-30-3(f) with regard to the school's alleged failure to inform the parent of the availability of mediation as a means of dispute resolution at the time the parent requests a due process hearing.

These issues were originally submitted to the independent hearing officer as part of Hearing #1201.01. The hearing officer determined that the issues would not be subsumed as part of the due process hearing and were returned to the Division of Special Education (the Division) on March 22, 2001, for investigation.

FINDINGS OF FACT:

1. The student is fourteen years old, is in the eighth grade, and is eligible for special education and related services as a student with an emotional disability.
2. The CCC convened on August 28, 2000, and determined that a change of placement was warranted. The parent signed the *Parent Permission for Placement* on that date. The *Case Conference Committee Summary*, dated August 28, 2000, contains the parent's signature indicating that she received both a verbal explanation as well as a written copy of Procedural Safeguards at this CCC meeting.
3. The CCC convened again on December 6, 2000, at which time the school proposed a change of placement. The parent declined to consent to the change of placement, but signed the *Case Conference Committee Summary* indicating that she received both a verbal explanation as well as a written copy of Procedural Safeguards at this CCC meeting.
4. On December 19, 2000, at the parent's request, staff from the school met with the parent to provide an explanation of the parent's rights related to due process hearings. Mediation was not discussed at this meeting due to the nature of the parent's request.
5. On January 25, 2001, the parent sent a letter to the Division requesting a due process hearing. The

letter was not signed and does not indicate that a copy was sent to the local school corporation or special education planning district. The Division made two attempts to contact the parent to request a signed copy of the request for a hearing, but was unsuccessful. On January 26, 2001, the Division received a letter, signed by local director of special education (director), requesting a due process hearing regarding the Student. The Division processed the director's request for a due process hearing. The Division's letter to the director, dated January 29, 2001, advised of the school's responsibility "to inform the parent of the availability of mediation as a viable means of resolving this dispute." At the prehearing conference on February 14, 2001, the parent advised she had not been told about mediation at the meeting on December 19, 2000. The school then informed the parent about mediation.

CONCLUSIONS:

- 1a. Findings of Fact #2 and #3 indicate that the school proposed a change of placement on two occasions during the current school year. The parent consented to the first change of placement, but declined to consent to the second. The parent acknowledged receipt of a written copy of the procedural safeguards each time the school proposed a change of placement. Therefore, no violation of 511 7-22-1(d) is found with respect to the provision of the notice of procedural safeguards at the time the school proposes a change of placement.
- 1b. Findings of Fact #4 and #5 reflect the school provided the parent with the notice of procedural safeguards in December 2000, when the parent requested information on due process hearings. The parent attempted to request a due process hearing in January 2001, but the request was not signed. Although a due process hearing was eventually initiated, it was at the school's request rather than the parent's request. Therefore, no violation of 511 IAC 7-22-1(d) is found with respect to provision of the notice of procedural safeguards at the time the parent requests a due process hearing.
2. Finding of Fact #4 demonstrates that, although the school met with the parent to discuss due process rights and procedures, information on mediation was not provided. Finding of Fact #5 indicates that, on January 29, 2001, as a result of the school's request for a due process hearing, the school was notified of its responsibility to inform the parent of the availability of mediation. Although the school eventually provided information about mediation, it did not do so until the parent requested the information at the time of the first pre-hearing conference. 34 CFR 300.504(a)(4) requires a public agency to provide parents with a copy of procedural safeguards available "[u]pon receipt of a request for due process. . ." The federal law does not relax this requirement based upon who requested the hearing. 34 CFR 300.507(a)(2), on which 511 IAC 7-30-3(f) is based, requires the school to inform the parent of the availability of mediation, regardless of who initiates the due process hearing. Because this is a matter of first impression, the Division will not cite a violation of 511 IAC 7-30-3(f). However, corrective action is warranted to clarify the school's responsibility in providing information on the availability of mediation as part of due process procedures and when a parent is to receive a copy of the procedural safeguards available when a due process hearing request has been initiated.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Lake Central School Corporation and the West Lake County Special Education Cooperative shall:

Review current policies and procedures to ensure that:

- a. when the school provides written or verbal information on due process procedures, mediation is included as part of that information; and
- b. upon the initiation of a request for a due process hearing, the school informs the parent of the availability of mediation as a means of resolving the dispute.

An assurance statement that information on mediation is included as part of the school's due process procedures and that parents will be informed of mediation upon the school's receipt of notification of a due process hearing, shall be submitted to the Division no later than May 7, 2001.

DATE REPORT COMPLETED: April 16, 2001